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SENATE BILL 581

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Richard M. Romero

AN ACT

RELATING TO PROPERTY TAXATION; PROVIDING TAX CREDITS FOR THE  
DONATION OF LAND OR INTEREST IN LAND; ENACTING THE LAND  
CONSERVATION INCENTIVES ACT; PROVIDING FOR ADMINISTRATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1  
through 6 of this act may be cited as the "Land Conservation  
Incentives Act".

Section 2. [NEW MATERIAL] PURPOSE. -- The purpose of the  
Land Conservation Incentives Act is to encourage private  
landowners to be stewards of lands that are important habitat  
areas or contain significant natural, open space and historic  
resources by providing private landowners with incentives that  
encourage the protection of private lands for open space,  
natural resources, biodiversity conservation, outdoor

1 recreation, farmland and forest land preservation, historic  
2 preservation and land conservation purposes.

3 Section 3. [NEW MATERIAL] DEFINITIONS. -- As used in the  
4 Land Conservation Incentives Act:

5 A. "interest in real property" means a right in  
6 real property, including access, improvements, water rights,  
7 fee simple interest, easement and land use easement. The  
8 interest shall comply with the requirements of the Section 170  
9 (h) of the Internal Revenue Code of 1986, partial interest,  
10 mineral right, remainder or future interest or other interest  
11 or right in real property;

12 B. "land" means real property, including rights of  
13 way, easements, privileges and all other rights or interests of  
14 a land or description relating to or connected with real  
15 property; and

16 C. "public or private conservation agency" means a  
17 governmental body or a private not-for-profit charitable  
18 corporation or trust authorized to do business in New Mexico  
19 that is organized and operated for natural resources, land  
20 conservation or historic preservation purposes and that has  
21 tax-exempt status as a public charity under the federal  
22 Internal Revenue Code of 1986, and the power to acquire, hold  
23 or maintain land or interests in land.

24 Section 4. [NEW MATERIAL] ADMINISTRATION. --

25 A. The Land Conservation Incentives Act shall be

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1 administered by the secretary of energy, minerals and natural  
2 resources in consultation with the committee established  
3 pursuant to the Natural Lands Protection Act.

4 B. The secretary of energy, minerals and natural  
5 resources may promulgate rules as may be deemed necessary to  
6 certify eligible projects for treatment in fulfillment of the  
7 purposes of this act. The secretary of taxation and revenue,  
8 in consultation with the secretary of energy, minerals and  
9 natural resources, shall promulgate rules as may be deemed  
10 necessary to administer the tax incentives provided for in the  
11 Land Conservation Incentives Act and shall coordinate the  
12 preparation of the report to the legislature showing the fiscal  
13 impact on the treasury of the credits claimed pursuant to that  
14 act.

15 Section 5. [NEW MATERIAL] APPLICABILITY AND  
16 LIMITATIONS. --

17 A. The tax credits provided by the Land  
18 Conservation Incentives Act apply to transfers of land or  
19 interests therein in taxable years beginning on or after  
20 January 1, 2004 and all taxable years thereafter.

21 B. A taxpayer claiming a tax credit pursuant to the  
22 Land Conservation Incentives Act may not claim a credit  
23 pursuant to a similar law for costs related to the same  
24 project.

25 C. A tax credit that is claimed pursuant to the

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1 Land Conservation Incentives Act from the donation of land or  
2 an interest in land made by a pass-through tax entity, such as  
3 a trust, estate, partnership, limited liability corporation or  
4 partnership, limited partnership, S corporation or other  
5 fiduciary, shall be used either by an entity in the event it is  
6 the taxpayer on behalf of the entity or by the member, manager,  
7 partner, shareholder or beneficiary, as the case may be, in  
8 proportion to his interest in the entity in the event that  
9 income, deductions and tax liability pass through the entity to  
10 the member, manager, partner, shareholder or beneficiary. Tax  
11 credits may not be claimed by both the entity and the member,  
12 manager, partner, shareholder or beneficiary for the same  
13 donation.

14 Section 6. [NEW MATERIAL] INTERPRETATION. --No part or  
15 segment of the Land Conservation Incentives Act shall be  
16 interpreted to alter or amend permit requirements, reporting  
17 requirements, allocation procedures or other requirements as  
18 set forth in any other provision of state law.

19 Section 7. A new section of the Income Tax act, Section  
20 7-2-18.10 NMSA 1978, is enacted to read:

21 "7-2-18.10. [NEW MATERIAL] TAX CREDIT AVAILABLE. --

22 A. There shall be allowed as a credit against the  
23 tax liability imposed by the Income Tax Act, an amount equal to  
24 the fair market value of land or interest in land that is  
25 conveyed for the purpose of open space, natural resource or

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1 biodiversity conservation, agricultural preservation or  
2 watershed or historic preservation as an unconditional donation  
3 in perpetuity by the landowner or taxpayer to a public or  
4 private conservation agency eligible to hold the land and  
5 interests therein for conservation or preservation purposes.

6 The fair market value of qualified donations made pursuant to  
7 this section shall be substantiated by a "qualified appraisal"  
8 prepared by a "qualified appraiser", as those terms are defined  
9 under applicable federal laws and regulations governing  
10 charitable contributions.

11 B. The amount of the credit that may be claimed by  
12 a taxpayer shall not exceed one hundred thousand dollars  
13 (\$100,000). In addition, in a taxable year the credit used may  
14 not exceed the amount of individual income tax otherwise due.  
15 A portion of the credit that is unused in a taxable year may be  
16 carried over for a maximum of twenty consecutive taxable years  
17 following the taxable year in which the credit originated until  
18 fully expended.

19 C. Qualified donations shall include the conveyance  
20 in perpetuity of a fee interest in real property or a  
21 less-than-fee interest in real property, such as a conservation  
22 restriction, preservation restriction, agricultural  
23 preservation restriction or watershed preservation restriction,  
24 pursuant to the Land Use Easement Act and provided that the  
25 less-than-fee interest qualifies as a charitable contribution

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1 deduction under Section 170(h) of the Internal Revenue Code.  
2 Dedications of land for open space for the purpose of  
3 fulfilling density requirements to obtain subdivision or  
4 building permits shall not be considered as qualified donations  
5 pursuant to the Land Conservation Incentives Act.

6 D. Qualified donations shall be eligible for the  
7 tax credit if the donations are made to the state of New  
8 Mexico, a political subdivision thereof or a charitable  
9 organization described in Section 501(c)(3) of the Internal  
10 Revenue Code and that meets the requirements of Section  
11 170(h)(3) of that code.

12 E. To be eligible for treatment as qualified  
13 donations under this section, land or interests in lands must  
14 be certified by the secretary of energy, minerals and natural  
15 resources as fulfilling the purposes as set forth in Section 2  
16 of the Land Conservation Incentives Act. The use and  
17 protection of the lands, or interests therein, for open space,  
18 natural area protection, biodiversity habitat conservation,  
19 land preservation, agricultural preservation, historic  
20 preservation or similar use or purpose of the property shall be  
21 assured in perpetuity. "

22 Section 8. A new section of the Corporate Income and  
23 Franchise Tax Act, Section 7-2A-8.9 NMSA 1978, is enacted to  
24 read:

25 "7-2A-8.9. [NEW MATERIAL] TAX CREDIT AVAILABLE. --

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1           A. There shall be allowed as a credit against the  
2 tax liability imposed by the Corporate Income and Franchise Tax  
3 Act an amount equal to the fair market value of land or  
4 interest in land that is conveyed for the purpose of open  
5 space, natural resource or biodiversity conservation,  
6 agricultural preservation or watershed or historic preservation  
7 as an unconditional donation in perpetuity by the landowner or  
8 taxpayer to a public or private conservation agency eligible to  
9 hold the land and interests therein for conservation or  
10 preservation purposes. The fair market value of qualified  
11 donations made pursuant to this section shall be substantiated  
12 by a "qualified appraisal" prepared by a "qualified appraiser",  
13 as those terms are defined under applicable federal laws and  
14 regulations governing charitable contributions.

15           B. The amount of the credit that may be claimed by  
16 a taxpayer shall not exceed one hundred thousand dollars  
17 (\$100,000). In addition, in a taxable year the credit used may  
18 not exceed the amount of corporate income tax otherwise due. A  
19 portion of the credit that is unused in a taxable year may be  
20 carried over for a maximum of twenty consecutive taxable years  
21 following the taxable year in which the credit originated until  
22 fully expended.

23           C. Qualified donations shall include the conveyance  
24 in perpetuity of a fee interest in real property or a  
25 less-than-fee interest in real property, such as a conservation

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1 restriction, preservation restriction, agricultural  
2 preservation restriction or watershed preservation restriction,  
3 pursuant to the Land Use Easement Act; provided that the  
4 less-than-fee interest qualifies as a charitable contribution  
5 deduction under Section 170(h) of the Internal Revenue Code.  
6 Dedications of land for open space for the purpose of  
7 fulfilling density requirements to obtain subdivision or  
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9 pursuant to the Land Conservation Incentives Act.

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